S.B.Civil Sales Tax Revision No.414/2000.
C.T.O.Udaipur
vs.
M/s Bansawara Syntex Ltd.

Date of Order: 07.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.
Mr. Sanjeev Johari for the respondent.

Heard learned counsel for the parties.

A notification exercising power conferred under Section 4(2) of the Rajasthan Sales Tax Act was issued by the Government on 24.8.1979.By this Notification, the exemption of tax has been granted to the sale of all machines for setting up industries in Rajasthan of certain nature referred in the Notification. In some of the cases, controversy raised that whether the word "setting up includes the expansion of existing industry or not", but that has been made clear by this Court in the judgment delivered in the case of Assistant Commercial Taxes Officer, Rajsamand v. M/S Srinath Minerals Industries, Nathdwara (S.B.Civil (Sales-Tax) Revision No.493/2000) decided on 14.11.2005, wherein it has been held that setting up means establishing a new industry and setting up cannot be construed to mean expansion.

In the present case, the case of the assessee was that he set up a new unit which is termed as Unit-B. For this new machines were purchased and on separate land machines were installed and production

has been taken by the assessee. The assessing authority held that the appellant-Unit is not new industrial unit and, therefore, is not entitled to take benefit of tax exemption in its order dated 10.2.1989. The assessee preferred appeal which was dismissed by the learned Deputy Commissioner(Appeals),Udaipur vide order dated 4.8.1989. Against this, the assessee preferred appeal before the Tax Board. The Tax Board observed that as per the assessee, his original registration of the industry-Unit is dated 26.10.1976 and according to the assessee, he on a different land and in different building, set up the newly purchased machines in the year 1981. In view of the above, the assessee was entitled to exemption under the Notification referred above.

According to the learned counsel for the petitioner, it was a case of mere expansion because of the reason that the assessee was already running the industrial unit for manufacturing of synthetic yarn. It is not the case of the assessee that he purchased new land and thereafter started any independent and new industrial unit. It is also submitted by the petitioner that the aim and object of the tax exemption was to encourage more coming up of new industrial units and that benefit has not been given on expansion of the existing industrial unit. It is also submitted that none of the authority below has held that the assessee has set up new industrial unit. Even it was not the case of the assessee that they had established new industrial unit and for that purpose, they

purchased the separate land. From the orders it transpires that some new machines were purchased in the year 1981 and they were established in the existing industrial unit of the assessee. Therefore, the Tax Board has committed error in interpreting the contention of the assessee itself while holding that it is a case of setting up a new industrial unit.

The learned counsel for the respondent-assessee vehemently submitted that the assessee has a right to set up the unit at the location which is most suitable to it. If the assessee has set up a new unit adjoining to his own existing industrial unit or even has set up a new industrial unit within his own land which it was possessing, then the exemption cannot be denied because of fortuitous circumstance of the assessee having the land nearby to its existing unit or within its existing unit. It is also submitted that it is a pure question of fact and that has been decided in favour of the assessee, therefore, this Court may not interfere in such order. The learned counsel for the respondent also submitted that the judgment of this Court relied upon by the learned counsel for the petitioner delivered in the case of Assistant Commercial Taxes Officer, Rajsamand vs. M/s Srinath Minerals Industries,Nathdwara(supra) has no application to the facts of this case because the assessee's case is not that the assessee is entitled to tax exemption on the ground of expansion of unit.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

It appears that none of the assessing authority, appellate authority and the Tax Board addressed it to the true controversy and in very cursory manner took into account only two facts that the assessee's case is that he purchased new machines in the year 1981 and set up the industry in “separate land and building”. None of the authority below in fact decided the question whether in fact the assessee established or set up a new industrial unit or not. Purchasing new machines itself cannot be a reason to hold that it was only for the purpose of establishing new industrial unit. Further merely putting some more machines in existing unit, cannot be termed as setting up of new industry. Setting up of new industry requires more work before it can be set up and, therefore, all those factors should have been considered by the assessing authority before deciding the claim of the assessee of setting up of new industry.

In view of the above, the order of the Tax Board dated 29.11.1999 is set aside and the order of the assessing authority dated 10.2.1989 and the appellate authority dated 4.8.1989 so far as they relate to the benefit of tax exemption are concerned, are set aside and the matter is remanded back to the assessing authority to decide whether the assessee set up new industrial unit and is entitled to the exemption

benefit under the Scheme of 1979 of tax exemption under the Notification dated 24.8.1979 after giving full opportunity of hearing to both the parties. Both the parties shall remain resent before the assessing authority on 07.8.2006.

The revision petition is partly allowed as indicated above.

(**PRAKASH TATIA),J.**

mlt.